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# SMALL CITIES CRITICAL AREAS ORDINANCE IMPLEMENTATION GUIDEBOOK



washington state department of  
community, trade and economic development



**Small Cities Critical Areas Ordinance Implementation Guidebook**

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## Small Cities Critical Areas Ordinance Implementation Guidebook

### INTRODUCTION

Many small cities that have worked hard to meet the state's requirements to update their critical areas ordinance are now faced with the questions: "What do we do with it? When is it used? What is a critical areas permit? How does critical area review relate to land use permits for subdivisions, short plats, etc.?" In jurisdictions that don't have professional planners and engineers on staff, these questions are left to the city clerk or city administrator to answer. With little or no training in land use planning, permitting, and environmental laws, the town leadership must rely on outside consultants, state agencies, or professionals at nearby cities or the county.



It is possible that over a period of time, through some trial and error, you can figure out how the critical areas regulations should be implemented based on the "typical" types of development that are common to your city. But there is some risk in this approach. Given the heavy reliance on science that the regulations are based on, it's difficult for non-scientists to interpret things at the project level. Also, you have to make "judgment calls" and interpret the regulations, and every time you do, that may create precedents for later questions. These routines and processes aren't always documented and when you face the inevitable staff turnovers, the new city clerk or administrator may be left to "re-invent" the process all over again.

To answer the questions above, the critical areas regulations are intended to be used whenever a development project impacts a critical area. A separate permit is not usually issued, but the development code including the critical areas section, is used along with other regulations addressing clearing and grading, stormwater management and subdivisions.

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### Purpose

The purpose of this guidebook is to assist small cities and towns in implementing their critical areas ordinance (CAO) in the context of the larger responsibility of reviewing and approving development. Guidance on addressing the requirements for updating the CAO is provided in the Critical Areas Assistance Handbook (11/2003) published by the Washington Department of Community, Trade and Economic Development. This guidebook provides tools and proven processes to use to make implementing a CAO easier.

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The specific type of information this guidebook will provide is:

- Resources and contacts that small cities might use for information on critical areas. This includes information on such issues as protecting habitat for fish and wildlife, rating wetlands, determining mitigation options, assessing aquifer vulnerability, assessing geological hazards, and integrating frequently flooded areas regulations with existing floodplain development regulations.
- Tools that cities can use to inform developers and property owners of requirements related to critical areas ordinances.
- Example documents that staff and elected officials can use in regulating critical areas ordinances.

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### Terminology

The language of growth management, including critical areas protection, has its own terms. Some of the most important for you to be familiar with are:

**Anadromous fish** – Species, such as salmon, which are born in fresh water, spend a large part of their lives in the sea, and return to fresh water rivers and streams to procreate.

**Best available science** – The current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925.

**Best management practices** – Conservation practices or systems of practices and management measures that minimize adverse impacts critical areas.

**Buffer** – An area that is contiguous to and protects a critical area which is required for the continued maintenance, functioning, and/or structural stability of a critical area.

**Critical aquifer recharge area** – Areas designated by WAC 365-190-080(2) that are determined to have a critical recharging effect on aquifers used for potable water as defined by WAC 365-190-030(2).

**Critical areas** – Any of the following areas or ecosystems: Aquifer recharge areas, fish and wildlife habitat conservation areas,



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frequently flooded areas, geologically hazardous areas, and wetlands, as defined in RCW 36.70A.

**Fish and wildlife habitat conservation areas** – Areas necessary for maintaining fish and wildlife species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created as defined by WAC 365-190-080(5).



**Frequently flooded areas** – Lands in the floodplain subject to a one percent (1%) or greater chance of flooding in any given year and those lands that provide important flood storage, conveyance and attenuation functions, as defined in accordance with WAC 365-190-080(3).

**Geologic hazard areas** – Lands or areas characterized by geologic, hydrologic, and topographic conditions that render them susceptible to potentially significant or severe risk of landslides, erosion, or seismic activity.

**Habitat** – The specific area or environment in which a particular type of plant or animal lives.

**Hydric soil** – A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part. This is a potential indicator of a wetland.

**Mitigation** – Avoiding, minimizing, or compensating for damage to critical areas.

**Monitoring** – Evaluating the impacts of development proposals on the environment (biological, hydrological, and geological elements of such systems) and determining how well any required mitigation measures are functioning through the monitoring period. May also include monitoring and analysis of data by

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various methods for the purpose of understanding and documenting changes in natural ecosystems and features. Also includes gathering baseline data.

**Qualified professional** – A person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional will have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology or related field, and have at least two years of related work experience. A geologist must have a state license.

**Restoration** – Measures taken to restore an altered or damaged natural feature including wetlands, streams, protected habitat, or their buffers. The restoration may be necessary due to an unauthorized alteration or it may be to reestablish structural and functional characteristics of the critical area that have been lost by alteration, past management activities, or catastrophic events.

**Riparian habitat** – Wetland habitat bordering a stream which is occasionally flooded and periodically supports plant life growing in water.

**SEPA** – The Washington State Environmental Policy Act.

**Streams** – Those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds and defined channel swales. The channel or bed need not contain water year-round.

**Wetlands** – Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include



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those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, local government shall use the Washington State Wetland Identification and Delineation Manual.

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### **How do you get help?**

The internet is a good place to start. State agencies, private conservation organizations, and other sister cities provide web-based information that can be useful to your city staff. Below you will find descriptions and websites for some of the most useful sites.

**MRSC** - <http://www.mrsc.org/> – The Municipal Research & Services Center (MRSC) is a non-profit, independent organization that works in cooperation with the Association of Washington Cities, the Washington State Association of Counties, and other organizations to provide

- Dependable, professional advice about local government issues
- Quick access to legal and policy research
- Practical solutions that work
- Sample documents: policies, ordinances, plans, budgets, etc.
- Timely and informative publications and guidebooks
- Largest and best local government library in the state
- 24-hour access to MRSC resources on the Web
- Research service that save time and money

For written documents and procedures, see the following website:  
<http://www.mrsc.org/sampledocs.aspx>

For information on critical areas:  
<http://www.mrsc.org/Subjects/Environment/criticalpg.aspx>

For information on development regulations:  
<http://www.mrsc.org/Subjects/Planning/devregpg.aspx>

For information on planning:  
<http://www.mrsc.org/Subjects/Planning/planning.aspx>

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### **Community, Trade and Economic Development (CTED) –** <http://www.cted.wa.gov/>

This Washington State department is grouped into six divisions: Community Services, Housing, Local Government, Trade & Economic Development, Public Works Board, and Energy Policy. Every division works toward our mission of investing in families, communities, and businesses and many of our programs span one or more divisions.

As part of the Local Government Division, Growth Management Services (GMS) assists local governments in designing their own growth management programs to fit local needs by:

- Providing technical and financial resources to help local governments develop and update county-wide planning policies, comprehensive plans, and development regulations, including critical areas ordinances.
- Helping counties and cities plan to conserve and protect their unique resource lands and critical areas.
- Reviewing local governments' plans and regulations for consistency and compliance with the Growth Management Act.
- Publishing guidebooks on chapters of the comprehensive plan including land use, transportation, capital facilities, and rural areas for counties.
- Presenting educational workshops and the Short Course on Local Planning for planning commissioners, local officials, and citizens.
- Facilitating Regional Planners Forums held quarterly in cooperation with the Washington State Chapter of the American Planning Association and the Planning Association of Washington to discuss important planning topics of the day.

The Growth Management Services section of CTED has a planning staff assigned to all Washington cities and counties. Appendix F contains a map and lists which planners are responsible for each county. These folks are a phone call 360.725.3000 or email away.

General program information is at:

[http://www.cted.wa.gov/portal/alias\\_CTED/lang\\_en/tabID\\_375/DesktopDefault.aspx](http://www.cted.wa.gov/portal/alias_CTED/lang_en/tabID_375/DesktopDefault.aspx)

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For CTED guidance on Critical Areas and Best Available Science, see

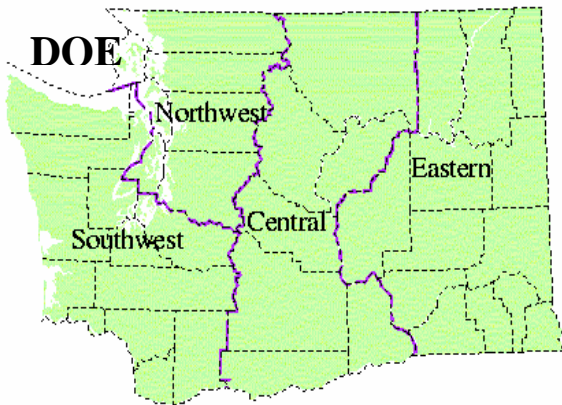
<http://www.cted.wa.gov/site/418/default.aspx>

**Short Course on Local Planning.** One of several ways in which CTED Growth Management Services (GMS) provides direct assistance to communities is through the Short Course on Local Planning, involving locally hosted workshops covering the legal basis of planning in Washington State, the basics of comprehensive planning and plan implementation, and the role of the planning commission. The Short Course is co-sponsored by the Planning Association of Washington ([www.planningpaw.org](http://www.planningpaw.org)). There is no charge for the course, other than a pre-course meal for the volunteer speakers. GMS schedules Short Courses at the request of local communities, and courses are always open to the public.

We can customize the presentations to address most subjects, including critical areas. We can help you with arrangements to schedule a Short Course by calling GMS at 360.725.3000 or [cynthiar@cted.wa.gov](mailto:cynthiar@cted.wa.gov).

Copies of the Short Course Manual are available on CD, or to download the course, choose Growth Management Services from the Quick Links menu of the CTED homepage and then scroll down the page to *Short Course on Local Planning*. Email Cynthia Ritchey ([cynthiar@cted.wa.gov](mailto:cynthiar@cted.wa.gov)) for a CD copy.

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### **Department of Ecology –**

<http://www.ecy.wa.gov/>

Ecology's Technical Assistance (TA) provides various resources to support voluntary compliance with environmental rules and good stewardship of Washington's environmental resources. The TA website is:

<http://www.ecy.wa.gov/ta.html>

Ecology's ground and surface water quality information is at

<http://www.ecy.wa.gov/programs/wq/links/standards.html>

Documents, training and other information on wetlands from Ecology is at

<http://www.ecy.wa.gov/programs/sea/wetlan.html>

Documents, training and information on floodplain management and related materials are at

<http://www.ecy.wa.gov/programs/sea/floods/index.html>

### **Department of Natural Resources –**

<http://www.dnr.wa.gov/>

The Department of Natural Resources has several sources of information that relate to critical areas protection.

DNR Geology and Earth Resources Program provides geological hazards mapping, as well as scientific information about geologic hazards such as landslides, earthquakes, tsunamis, volcanoes, and abandoned coal mines. More information is at

<http://www.dnr.wa.gov/geology/>

### **Department Of Ecology**

#### **Regional Offices**

##### **Headquarters**

300 Desmond Drive  
Lacey, WA 98503  
360-407-6000

##### **Northwest Regional Office**

3190 - 160th Ave. SE  
Bellevue, WA 98008-5452  
425-649-7000

##### **Southwest Regional Office**

300 Desmond Drive  
Lacey, WA 98503  
360-407-6300

##### **Central Regional Office**

15 West Yakima Ave - Suite 200  
Yakima, WA 98902-3452  
509-575-2490

##### **Eastern Regional Office**

N. 4601 Monroe  
Spokane, WA 99205-1295  
509-329-3400

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DNR Aquatic Lands Program manages state owned aquatic lands including issuing use agreements for marinas, docks, boat ramps, bridges, and bedlands. More information is at

<http://www.dnr.wa.gov/htdocs/aqr/>

DNR Forest Practices Program regulates forest practices through the Forest Practices Board rules which guide logging, road-building, and other work in the woods. More information is at

<http://www.dnr.wa.gov/forestpractices/>

DNR manages state owned timberlands and some agricultural lands. More information is at

<http://www.dnr.wa.gov/base/statelands.html>

DNR manages Natural Area Preserves and Natural Resource Conservation Areas, which provide human recreational and educational opportunities throughout the state, while conserving important ecological resources and fish and wildlife habitat. More information is at

<http://www.dnr.wa.gov/nap/>

DNR manages the Natural Heritage Program that manages sites and information critical to rare and endangered species in Washington State. More information is at

<http://www.dnr.wa.gov/nhp/>

DNR offers scientific and technical assistance to landowners on agricultural conservation, forest stewardship, and community forestry. They also provide map products and aerial photos. This information is at the following web sites.

<http://www.dnr.wa.gov/base/education.html>

<http://www.dnr.wa.gov/htdocs/rp/rp.html>

<http://www.dnr.wa.gov/htdocs/rp/urban/urban.htm>

<http://www.dnr.wa.gov/dataandmaps/maps/index.html>

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### **Department of Fish and Wildlife – <http://wdfw.wa.gov/>**

The mission of WDFW is to provide sound stewardship of fish and wildlife. The Washington Department of Fish and Wildlife manages more than 640 animal species that range from butterflies to elk. WDFW also manages approximately 150 species of fish and shellfish ranging from clams to salmon. WDFW jointly co-manages many of these species with Native American Tribes. They help to protect and enhance the places that provide fish and wildlife needs, such as clean water, food, and cover. WDFW also enforces habitat protection laws.

Critical areas information pertaining to fish and wildlife is on their Habitat page at

<http://wdfw.wa.gov/habitat.htm>

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### **Other helpful info**

The Washington chapter of the American Planning Association (WA APA) sponsors lectures, continuing education, workshops, training and more. These events are aimed at planning professionals and non-member city staff are always welcome. Most events are free or have a nominal charge. For general and statewide events see the main website at

<http://www.washington-apa.org/>

The geographic sections of the WA APA (Puget Sound, Inland Empire, Northwest, Southwest, Peninsula) also program educational and informational events for continuing education on current topics important to planners and other city officials such as site plan approval, environmental review, and Historic Preservation. For more information, see the Sections tab at the above web site.

The Watershed Planning Act set a framework for developing local solutions to watershed issues on a watershed basis. Watershed Resource Inventory Areas or WRIAs refer to the state's major watershed basins. WRIAs are excellent sources of information pertaining to not only watersheds, but also streams, habitats and shorelines. For more information, see:

<http://www.ecy.wa.gov/watershed/index.html>



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Washington Trout is a non-profit conservation-ecology organization dedicated to the preservation and recovery of Washington's native fish and the ecosystems they depend on. Washington Trout seeks to improve conditions for all of Washington's wild fish by conducting important research on wild-fish populations and habitats, advocating for better land-use, salmon-harvest, and hatchery management, and developing model habitat-restoration projects.

<http://www.washingtontrout.org/index.shtml>

The Society of Wetland Scientists is another source of info and qualified professionals. See the two websites below.

<http://www.sws.org/> <http://pnw.sws.org/>

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### **Critical Areas Assistance Handbook**

The GMA requires that comprehensive land use plans and development regulations, including critical areas regulations, be subject to continuing review and evaluation by the county or city that adopted them. In 1995, the Legislature amended the GMA to require counties and cities to take legislative action to review and, if needed, revise their comprehensive land use plans and development regulations to ensure the plans and regulations comply with the requirements of the act. In 2002, this law was amended to establish a phased seven-year cycle for this update work.

The Washington State Department of Community, Trade and Economic Development (CTED) published the Critical Areas Assistance Handbook in November 2003 and is meant as a guide to writing and updating a critical areas ordinance. The purpose of the handbook is to help Washington communities design locally appropriate programs for designating and protecting critical areas. The handbook discusses how to develop a protection program, how to identify and map critical areas, best available science and how to use it in designating and protecting critical areas. The appendices contain many useful examples that can be employed in developing a local ordinance including example code with explanations and alternate suggestions. An electronic copy of the handbook can be downloaded at

<http://www.cted.wa.gov/site/418/default.aspx>

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### **How To Use This Small Cities Implementation Guidebook**

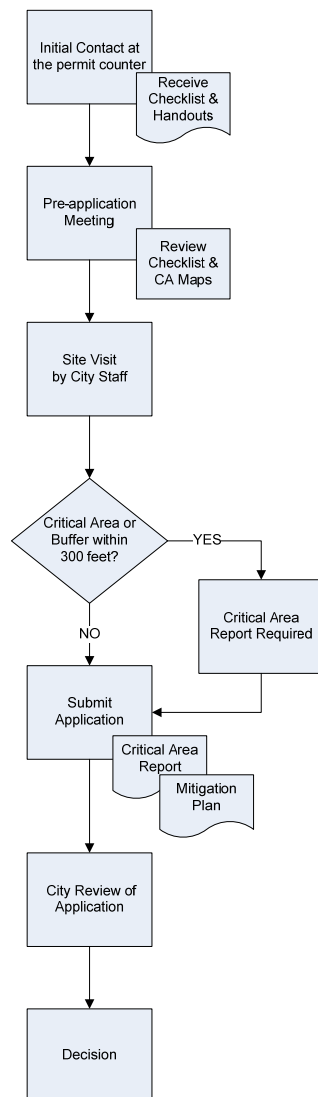
This guidebook presumes a local jurisdiction has updated their critical areas code to meet the best available science requirements (using the Critical Areas Assistance Handbook) and now is ready to use the code in normal day-to-day permitting activities.

Many different types of projects can trigger your critical areas development code: from large-scale residential or commercial developments to single parcel new construction, to property maintenance or repair, to land divisions. This document will use the term **project** to denote anything that will trigger critical areas regulatory protection.

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### CRITICAL AREAS PROCESS MANAGEMENT

This section presents the general sequence of events, that occur when a development permit is processed, including:



- **Initial Contact.** This is usually when the question is asked: “What do I need to do to build my project?” The applicant should also receive a “project application packet” that includes application forms, checklists and various other handouts.
- **Pre-Application Meeting.** This is scheduled after the applicant has had a chance to review the information materials available and prepare the Critical Areas Checklist. This is a chance for the administrative official to answer questions and make sure the applicant understands the process.
- **Site Visit.** A site visit by the applicant and the administrative official allows them to see the site and discuss the existing conditions and the applicant’s objectives.
- **Critical Areas Report.** This report, prepared by the applicant’s qualified professional, verifies the nature, extent and location of critical areas on the project site, assesses their functions and values, and determines if they will be impacted by the project. It will indicate what measures will be undertaken to compensate for any impact such as establishing buffers or creating a mitigation plan.
- **Application Submittal.** This would be all application materials including the critical areas report and mitigation plan, if required.
- **City review.** During the review process, the city’s responsibility is to make sure that the critical areas assessment is adequate and appropriate and whether additional approval

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conditions may be necessary to ensure that the impacts are adequately mitigated.

- **Decision.** Rather than just a straight yes or no on the project, the decision will usually be a conditioned approval.

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### **Initial Contact About a Project**

Sometimes citizens don't really have a specific project in mind, but are just trying to find out how to learn about critical areas and how they affect the options for using their property. When someone first shows up at the permit counter, the city should have printed information to help them understand the regulations and prepare for their project permit applications. This should include several items related to critical areas regulations such as:

- Critical areas application process flowchart
- Critical areas checklist
- Other informational handouts
- Information on the pre-application meeting

Examples of these and other forms and handouts can be found in the appendix. Customizable versions can be downloaded on the Growth Management Services website at CTED:

#### **[Work in process]**

<http://www.cted.wa.gov/site/375/default.aspx>

**Critical areas application process.** The flowchart gives an easily understood overview of the critical areas portion of the project's application process. A copy of the flow chart above is in Appendix B.

**Critical areas checklist.** The checklist, consisting of simple questions, is used as an initial screening process to help establish whether there is potential for the project to impact critical areas. Along with the site visit, this checklist will help determine whether the applicant will be required to proceed with a formal Critical Areas Report. An editable copy of the Critical Areas Checklist is located in Appendix C.

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**Handouts.** These other handouts might include information about what critical areas are, why and how they are protected, how they are identified and delineated and specific information pertaining to the type of critical area such as wetland buffer and fish and wildlife corridors. Although this information may be very familiar to large developers and other frequent visitors to the permit counter, the handouts can be especially useful for homeowners and small contractors who may be encountering the critical areas ordinance for the first time. The Skagit County Wetlands, Stream and Geo-Hazards Fact Sheets are good example of these handouts. Modifiable copies of these handouts are in Appendix D.

**Maps.** If available, you could provide critical areas maps at this time. If you have not yet produced any critical areas maps, you may be able to acquire maps or data from state agencies or the county.

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### **Pre-Application Meeting**

Prior to submitting an application for a building project, short plat or some other land use activity, the applicant should meet with the Administrative Official (AO) to discuss, among other things, critical areas requirements. The information reviewed at this time will help make several procedural determinations such as whether an exemption applies or if a Critical Areas Report is necessary. The critical areas discussion may include the following:

- Review of the submitted Check List
- Review of city critical areas maps, inventories or soil surveys
- Identify whether an exemption or exception applies
- Determine if a Critical Areas Report is required

**Critical areas checklist.** The existence of a critical area is not always obvious so the purpose of the critical areas checklist is to help discern whether there is or may be a critical area or buffer within the project area. The questions should be simple and easily answered by a homeowner or developer. The example checklist included in this guidebook asks about terrain (flat, rolling, hilly etc.), about standing water, whether there is a creek or stream, and it asks about vegetation.

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When reviewed in conjunction with local critical areas maps during the pre-application meeting, the administrative official may be able to determine whether a critical areas report will be required.



**Sample of a critical areas map**

**City critical areas maps.** Critical areas maps, which may or may not be available, are usually not official representations of delineated critical areas. These maps are meant to assist city staff in reviewing project applications and are used in conjunction with official delineations, site visits and input from developers. The review of these maps helps the city and applicant to see generally, what types of critical areas and their buffers may be present.

**Is there an exemption?** Exemptions range from emergency repairs to routine repair, maintenance and modifications of existing structures to activities within the improved right-of-way to removal of certain vegetation and other projects. Exempt activities must still comply with the Critical Areas Ordinance, but they may not be required to complete a Critical Areas Report. If an exemption applies, the Administrative Official can approve the project without a critical areas report or a review by the hearing examiner.



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**Administrative Exception?** Administrative exceptions are generally used on small projects such as the construction or modification of a single family residence with minimal impact to critical areas or their buffers. This exception is usually limited to critical areas such as Type N riparian areas and Category III & IV wetlands. This exception gives the authority to approve these small projects to the AO instead of going to the hearing examiner. Critical areas reports and mitigation plans are still usually required.

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### **Site Visit**

A site visit is usually made by the Administrative Official or the city's consultant to help determine whether there is the potential to impact a critical area. It is usually preferred that the applicant and the AO visit the site together to promote an open discussion of the physical attributes of the property.

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### **Critical Areas Report**

If the AO determines that there is the potential to impact critical areas or their buffers, a Critical Areas Report will be required. This report, sometimes called a site assessment or special study, is produced by a qualified professional who does an in-depth and detailed study of the project area. The report identifies what critical areas are in the project area, where exactly they are located, how the critical areas will be impacted and how the developer proposes to deal with the impact to critical areas. This is a very technical report that must be prepared by a qualified professional. Because of that, a critical areas report checklist can be beneficial to people at the permit counter and to the developers who are creating these reports. The checklist identifies exactly what is required to be included in the report. (See an example in Appendix D)

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### **Will Critical Areas Be Impacted?**

If a proposed project will have impacts on critical areas, measures to protect the critical areas must be decided upon, the impacts must be mitigated, or compensation measures for the impacts to the critical areas must be decided upon. The following are some ways to protect critical areas and address impacts in the critical areas report.

- Buffers. Proposed buffers are identified.

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### **Mitigation Sequence**

Before critical areas can be impacted, applicants must demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. The following is the preferred sequence of events to be considered:

- Avoid the impact altogether by not taking certain actions
- Minimize impacts by limiting the magnitude of an action, by using technology or by taking steps to avoid or reduce impacts;
- Rectify the impact by repairing, rehabilitating, or restoring the affected environment
- Reduce or eliminate the impact by preservation and maintenance-
- Compensate by replacing, enhancing, or substitute resources
- Monitor the impact and take appropriate corrective measures.

- Notice on title. This identifies delineated critical areas, buffers and native growth protection areas and guarantees that identified areas stay with the property.
- Designate Native Growth Protection Areas. These areas, identified on the property title, designate areas on private property that need to be maintained in their natural state.
- Designate Critical Areas Tract. Similar to native growth protection areas except these are separate tracts, generally owned by a homeowners association, which need to be maintained in their natural state.
- Mitigation Plan. Once it has been determined that a project will impact a critical area or its buffer, a mitigation plan needs to be developed. The mitigation plan explicitly lays out how the developer plans to mitigate the impact. This plan is developed by the qualified professional in conjunction with the critical areas report. The plan is a proposal by the developer and is subject to review and approval by the jurisdiction along with the rest of the application.

An example of a Mitigation Plan Checklist is provided as part of the Critical Areas Report Checklist in the appendix.

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### **Application Submittal**

The Critical Areas Report, a Mitigation Plan, if required, and all supporting documentation are submitted with the project application. Appropriate fees for the review of the application materials are paid at this time.

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### **Decision**

This decision is on the entire project permit not just the critical areas. Under limited, specific circumstances, the administrative official may render a decision on a project. These are usually small projects specifically identified in the municipal code.

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In most instances, a hearings official, planning commission or city council makes the decision. Those decisions are not necessarily yes or no, but rather with specific conditions. This means that the project is approved as long as certain conditions are met.

Following are some examples of what those conditions could be:

- Ensuring access for emergency vehicles
- Increasing right-of-way to comply with municipal code
- Mitigation plan for impacts to wetlands or habitat
- Modify setbacks to comply with code

If the permit is denied or if the applicant does not agree with some of the conditions, they usually have several options for next steps. Some of those options are described below.

- **Appeal.** Usually appeals are taken to the next higher authority such as the hearing examiner, the planning commission or the city council. Appeal procedures are included in the critical areas code.
- **Reasonable Use Exception.** If the application of a critical areas ordinance would deny all reasonable use of a property, the property owner would apply for a reasonable use exception. This might be used when buffers or setbacks severely limit or even eliminate the ability of the property owner to develop an existing legal lot. This might allow a reduction in a buffer or setback to accommodate a single-family residence.
- **Variance.** A variance would grant relief from the requirements of the code by permitting construction that would otherwise be prohibited by the code. This is used if the strict application of the code is found to prevent reasonable development activities. What is reasonable is often affected by what development has already occurred on other properties in the area. Variances are also used to address special circumstances that are unforeseen by the code, relating to special circumstances of the property, including size, shape, and topography.

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### **Follow-up and Monitoring**

Follow-up and monitoring means managing data on development impacts and mitigation projects.

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### **SCENARIO EXAMPLES**

The following examples are meant to show how typical permit applications might proceed through the system in relation to the critical areas code.

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#### **Deck Addition**

In this example, the homeowner wishes to add a deck to the rear of her home. The property is adjacent to a Type F stream and the ordinary high water mark and habitat buffer were established when the home was built.

- **Initial Contact.** The applicant shows up at the permit counter and inquires about what requirements need to be met to build a deck. She receives a “project application packet” including information on streams and a critical areas checklist.
- **Pre-Application Meeting.** At the pre-application meeting, the homeowner and the Administrative Official (AO) review a critical areas map that includes the property, the deck plans and the critical areas checklist. Although the home is not located in the floodplain or the habitat buffer, it appears that the proposed deck may intrude into the buffer and a site visit is scheduled.
- **Site Visit.** During the site visit, it is determined that the deck will not intrude into the buffer but it will be built partially within the building setback.

At this point the AO is able to make a determination on critical areas impacts for the deck project. The project is within 300 feet of a critical area which normally triggers the local code requirement for a critical areas report. But since the project is clearly outside of the buffer, the AO can waive the critical areas report because the requirements that an addition to an existing legally constructed structure that does not further alter or increase the impact to the critical area or buffer qualifies for a partial exemption as defined in the municipal code. The building setback does not apply because uncovered decks are specifically allowed in setbacks. The homeowner may continue with the permit application process with no additional critical areas requirements.

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### **Short Plat**

A property owner wishes to split a small parcel into six lots and build single family residences on each. The property gently slopes to one corner where there is a small pond.

- **Initial Contact.** The property owner is experienced so he picks up a packet at the permit counter and schedules a pre-application meeting.
- **Pre-Application Meeting.** At the pre-application meeting, the property owner and the Administrative Official (AO) review a critical areas map that includes the property, a preliminary site plan and the critical areas checklist. On the checklist, the property owner has indicated that the area around the pond has standing water at times. The critical areas map doesn't show wetlands so a site visit is scheduled.
- **Site Visit.** During the site visit, the AO notes vegetation and other signs that indicate the possibility of wetlands on the site. As most of the planned project site is within 300 feet of the pond and possible wetlands, the AO determines that a critical areas report will be required.
- **Critical Areas Report.** The property owner hires a "qualified professional" to complete the critical areas report. The town has provided a copy of the critical areas report checklist that is used to help review the finished report.

The critical areas report identifies the area around the pond as a category III wetland. Based on the habitat score obtained during the wetland classification, the report recommends a 75 foot buffer as established in the critical areas code. The report further recommends, in accordance with the critical areas code, a 10% buffer reduction for cleanup of significant refuse throughout the pond, the wetland and its buffer and an additional 10% buffer reduction for removal and maintenance of invasive non-native vegetation. Native vegetation will be re-planted in degraded portions of the wetland and its buffer which will be monitored and maintained for five years. A mitigation plan is included in the report that documents that mitigation sequencing was applied, that the wetland functions and values will be maintained. Finally, the pond, wetland and buffer are to be placed into a separate critical areas tract to be maintained by a homeowners association comprised of the owners of the six new lots.

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- **Application Submittal.** The critical areas report is submitted along with the rest of the completed permit application.
- **City review.** The permit review may be carried out by city staff such as a planner or city administrator or by a contract planner or consultant. The review is usually documented in a staff report that details where the application complies with city code and where it may not comply. A recommendation accompanies the staff report and typically, may recommend conditional approval. Conditions might include requests for additional documentation, an adjustment to a site plan to bring it into compliance with local ordinances or additional detail in a mitigation plan.

In reviewing the critical areas report in this application, the city reviewer agrees with the classification of the wetland and the establishment of a 75 foot buffer. The reviewer recommends approval of the requested buffer reductions with the condition that the mitigation plan be amended to include an explanation of how monitoring and maintenance will be done. And the reviewer verifies that the critical areas tract complies with municipal code.

- **Decision.** The decision is typically rendered by a hearing examiner or the city council and unless the applicant can convince the decision making authority otherwise, the city reviewer's recommendation will strongly influence the decision.



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**APPENDICES**

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**Appendix A – Code Examples**

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**Appendix B – Flow chart showing CAO process**

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**Appendix C – Critical Areas Check list**

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**Appendix D – Critical Areas Report Check list**

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**Appendix E – Information sheet handouts (examples)**

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**Appendix F – Staff Contacts in Growth Management Services**

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